

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

NASH DURHAM and MARY DURHAM,

Plaintiffs,

Civ. No. 12-273-PA

TEMPORARY RESTRAINING ORDER

v.

THE BANK OF NEW YORK MELLON,
AS TRUSTEE FOR THE CERTIFICATE
HOLDERS OF THE CWALT, INC.,
ALTERNATIVE LOAN TRUST 2007-
23CB, MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2007-23CB
and RECONTRUST COMPANY, N.A.,

Defendants.

PANNER, J.

Plaintiffs seek an ex parte temporary restraining order to enjoin the foreclosure sale of their house. Plaintiffs allege the house is scheduled for a foreclosure sale on February 27, 2012, and that defendants have not complied with the legal requirements for a valid non-judicial foreclosure. Specifically, plaintiffs allege defendants failed to record all assignments of the trust deed in the county land records prior to initiating the foreclosure proceedings. In Oregon, a party initiating non-judicial foreclosure proceedings must record all assignments of

the trust deed. ORS 86.735(1); Hooker v. Northwest Trustee Services, Inc., 2011 WL 2119103, *3 (D. Or. May 25) (citing Burgett v. MERS, 2010 WL 4282105, at *2 (D. Or. Oct. 20) and In re McCoy, 2011 WL 477820, at *3-4 (Bankr. D. Or. Feb. 7)).

Plaintiffs allege MERS is listed as the beneficiary on the deed of trust at issue.

Because of the alleged imminent foreclosure sale, and because the presence of MERS demonstrates a high probability that defendants did not comply with the recording requirements of the Oregon Trust Deed Act, I grant plaintiffs' request for a temporary restraining order (#3). Defendants, and their officers, agents, etc..., and other persons in active concert or participation with defendants, who receive actual notice of this order, are restrained from conducting a foreclosure sale for the following property: 1600 China Gulch Road, Jacksonville, Oregon, from this day until March 8, 2012, at 5:00 p.m. This court will hold a hearing on whether to issue a preliminary injunction at 10:00 a.m. on March 8, 2012, in the James A. Redden Courthouse in Medford.

IT IS SO ORDERED.

DATED this 23 day of February, 2012, at 9:30 a.m.



OWEN M. PANNER
U.S. DISTRICT JUDGE